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April 5, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund; High-Cost Universal Service Support,* WC Dockets 10-90 & 05-337; FairPoint Communications, Inc. Petition for Waiver To Exclude IAS, ICLS And LSS From The Requirement To Repurpose Frozen High-Cost Support Toward Broadband Deployment In 2013 And Beyond (filed Feb. 8, 2013) – Notice of *Ex Parte* Communication

Dear Ms. Dortch:

On Wednesday, April 2, 2013, Peter Nixon and Michael Skrivan of FairPoint Communications, Inc. ("FairPoint") and I met with the individuals listed below concerning the above-captioned Petition for Waiver (the "Petition").[1]

In these meetings, FairPoint explained that the requirement to repurpose interstate access support ("IAS"), interstate common line support ("ICLS") and local switching support ("LSS") to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor would divert much-needed funds from FairPoint's existing network operations. FairPoint seeks a waiver from the requirement to use at least one-third of frozen IAS, ICLS and LSS in 2013, and at least two–thirds of such support in 2014 and all of such support in subsequent years if Phase II of the Connect America Fund ("CAF") is not yet implemented, in areas substantially unserved by an unsubsidized competitor.

Prompt action is warranted on FairPoint's Petition. The one-third spending requirement for 2013 already is forcing FairPoint to devote substantial resources to planning and executing broadband capital and operational expenditures in the target areas. FairPoint explained that the obligation under Section 54.313(c) of the Commission's rules to use at least one-third of its 2013

[1] *See* Public Notice, *Wireline Competition Bureau Seeks Comment on FairPoint Communications, Inc. Petition for Waiver of Certain High-Cost Universal Service Rules*, DA 13-213 (rel. Feb. 14, 2013).

frozen high-cost support, approximately $13,088,956,[2] in areas substantially unserved by an unsubsidized competitor already is adversely affecting FairPoint. This mandate requires that FairPoint employ network engineers to identify eligible target areas – in some study areas, a small fraction of the total service area – and plan the use of these funds in 2013 and beyond so as to comply with the obligation under Section 54.313(c) of the Commission's rules. This represents substantial resources for a company of FairPoint's size, and a hardship given the company's unique position. If FairPoint were not required to target the frozen support to areas "substantially unserved by an unsubsidized competitor," these expenses could be largely minimized.

Moreover, FairPoint does not believe it could make up the expected revenue shortfall through increased end-user charges. As discussed with Commission staff, there may be some ambiguity in the *USF-ICC Transformation Order* concerning whether subscriber line charges ("SLCs") may be raised during CAF Phase I.[3] Even if FairPoint could raise SLCs to the cap in some of its price cap study areas, however, SLCs are at the cap in all of its rural rate-of-return study areas, and only limited relief appears to be available through additional CAF-ICC support, as demonstrated in the materials enclosed herewith.[4] As a practical matter, FairPoint could not raise end-user rates by the amount necessary to recoup the repurposed revenues – an increase of $10.92 per line per month for the ICLS amounts alone.[5]

Due to the multi-year transition anticipated by the Commission between CAF Phase I and CAF Phase II,[6] FairPoint does not expect this to be a short-term problem. FairPoint therefore urges a prompt ruling by the Wireline Competition Bureau or the Commission that FairPoint is not required to use at least one-third of frozen IAS, ICLS and LSS in 2013, and more in

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2 The Petition correctly states that the total frozen high-cost support received by FairPoint in 2013 is expected to be $39,266,868 (following the sale of Fremont Telcom in January 2013). Petition at 3 & n. 3. The Petition incorrectly states that one-third of FairPoint's total frozen high-cost support is $13,841,492. Petition at 5. The correct figure is $13,088,956 (to reflect the Fremont sale). The correct figure is included in the enclosed materials, on slide 7, which were distributed in the meetings. Moreover, the Petition correctly identifies the amount for which the waiver is sought, which is $8,925,295 for 2013. Petition at 5.

3 *See Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶152 (2011) *("USF-ICC Transformation Order")*.

4 FairPoint Communications, "Petition for Waiver of Section 54.313(c) of the FCC's Rules To Exclude IAS, ICLS and LSS From the Requirement To Repurpose Frozen High-Cost Support Toward Broadband," PowerPoint presentation, slide 7.

5 Petition at 13.

6 *USF-ICC Transformation Order* at ¶180 & n. 294.

subsequent years, to build and operate broadband in areas substantially unserved by an unsubsidized competitor.

The enclosed materials were distributed and discussed in the meetings. Please direct any questions concerning this matter to me.

Respectfully submitted,

Karen Brinkmann

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Counsel to FairPoint Communications, Inc.

Enclosure

cc: Priscilla Argeris
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